



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2017-0735; FRL-9989-99-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania;
Nonattainment New Source Review Requirements for 2008 8-Hour Ozone Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision was in response to EPA's February 3, 2017 Findings of Failure to Submit for various requirements relating to the 2008 8-hour ozone national ambient air quality standards (NAAQS). This SIP revision is specific to nonattainment new source review (NNSR) requirements. EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2017-0735. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are

available through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Amy Johansen, (215) 814-2156, or by e-mail at johansen.amy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 6, 2018 (83 FR 62774), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Pennsylvania. In the NPRM, EPA proposed approval of Pennsylvania’s NNSR Certification for the 2008 Ozone Standard. This SIP revision is in response to EPA’s final 2008 8-hour ozone NAAQS Findings of Failure to Submit for NNSR requirements. See 82 FR 9158 (February 3, 2017). Specifically, Pennsylvania is certifying that its existing NNSR program, covering the Allentown-Bethlehem-Easton, PA Nonattainment Area (which includes Carbon, Lehigh, and Northampton Counties), the Lancaster, PA Nonattainment Area (which includes Lancaster County) the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE Nonattainment Area (which includes Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties), Pittsburgh-Beaver Valley, PA Nonattainment Area (which includes Allegheny, Beaver, Butler, Fayette, Washington, and Westmoreland Counties) and the Reading, PA Nonattainment Area (which includes Berks County) for the 2008 8-hour ozone NAAQS, is at least as stringent as the requirements at 40 CFR 51.165, as amended by the final rule titled “Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements” (SIP Requirements Rule), for ozone and its precursors.^{1,2}

¹ The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 8-hour ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP),

See 80 FR 12264 (March 6, 2015). The formal SIP revision was submitted by Pennsylvania on October 30, 2017.

A. 2008 8-Hour Ozone NAAQS

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). See 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR 50.15, the 2008 8-hour ozone NAAQS is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data at the conclusion of the designation process. The Allentown-Bethlehem-Easton, PA Nonattainment Area, the Lancaster, PA Nonattainment Area, the Pittsburgh-Beaver Valley, PA Nonattainment Area, and the Reading, PA Nonattainment Area were classified as marginal nonattainment areas for the 2008 8-hour ozone NAAQS on May 21, 2012 (effective July 20, 2012) using 2009-2011 ambient air quality data. See 77 FR 30088. The Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE Nonattainment Area was classified as a marginal nonattainment area for the 2008 8-hour ozone NAAQS on May 21, 2012 (effective July 20, 2012) using 2008-2010 ambient air quality data. See 77 FR 30088. On March 6, 2015, EPA

reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The rule also revokes the 1997 ozone NAAQS and establishes anti-backsliding requirements.

² On February 16, 2018, the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir. Court or Court) issued an opinion on the EPA's SIP Requirements Rule. *South Coast Air Quality Mgmt. Dist. v. EPA*, 882 F.3d 1138, 2018 U.S. App.LEXIS 3636 (D.C. Cir. Feb. 16, 2018). The D.C. Cir. Court found certain provisions from the SIP Requirements Rule, including certain provisions relating to anti-backsliding, to be inconsistent with the statute or unreasonable and vacated those provisions. *Id.* The Court found other parts of the SIP Requirements Rule unrelated to anti-backsliding and this action reasonable and denied the petition for appeal on those provisions. *Id.*

issued the final SIP Requirements Rule, which establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2008 8-hour ozone NAAQS. See 80 FR 12264. Areas that were designated as marginal ozone nonattainment areas were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2015, based on 2012-2014 monitoring data. See 40 CFR 51.1103. The Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE and the Pittsburgh-Beaver Valley, PA Nonattainment Areas did not attain the 2008 8-hour ozone NAAQS by July 20, 2015; however, these areas did meet the CAA section 181(a)(5) criteria, as interpreted in 40 CFR 51.1107, for a one-year attainment date extension. See 81 FR 26697 (May 4, 2016). Therefore, on April 11, 2016, the EPA Administrator signed a final rule extending the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE and the Pittsburgh-Beaver Valley, PA Nonattainment Area 8-hour ozone NAAQS attainment dates from July 20, 2015 to July 20, 2016. *Id.* Based on initial nonattainment designations for the 2008 8-hour ozone standard, as well as the March 6, 2015 final SIP Requirements Rule, Pennsylvania was required to develop a SIP revision addressing certain CAA requirements for the Allentown-Bethlehem-Easton, PA, the Lancaster, PA, the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD, DE, the Pittsburgh-Beaver Valley, PA, and the Reading, PA Nonattainment Areas, and submit to EPA a NNSR Certification SIP or SIP revision no later than 36 months after the effective date of area designations for the 2008 8-hour ozone NAAQS (i.e., July 20, 2015). See 80 FR 12264 (March 6, 2015). EPA is approving Pennsylvania's October 30, 2017 NNSR Certification SIP revision.

B. 2017 Findings of Failure to Submit SIP for the 2008 8-Hour Ozone NAAQS

Areas designated nonattainment for the ozone NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and also to the ozone-specific planning

requirements of CAA section 182. States in the ozone transport region (OTR), such as Pennsylvania, are additionally subject to the requirements outlined in CAA section 184.

Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For marginal areas, such as the Allentown-Bethlehem-Easton, PA, the Lancaster, PA, the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD, DE, the Pittsburgh-Beaver Valley, PA, and the Reading, PA Areas, a state is required to submit a baseline emissions inventory, adopt a SIP requiring emissions statements from stationary sources and implement a NNSR program for the relevant ozone standard. See CAA section 182(a). For each higher ozone nonattainment classification, a state needs to comply with all lower area classification requirements, plus additional emissions controls and more expansive NNSR offset requirements.

The CAA sets out specific requirements for states in the OTR. Upon promulgation of the 2008 8-hour ozone NAAQS, states in the OTR were required to submit a SIP revision addressing reasonably available control technology (RACT). See 40 CFR 51.1116. This requirement is the only recurring obligation for an OTR state upon revision of a NAAQS, unless that state also contains some portion of a nonattainment area for the revised NAAQS. In that case, the nonattainment requirements described previously also apply to those portions of that state.

In the March 6, 2015 SIP Requirements Rule, EPA detailed the requirements applicable to ozone nonattainment areas, as well as requirements that apply in the OTR, and provided specific deadlines for SIP submittals. See 80 FR 12264.

On February 3, 2017, EPA found that 15 states and the District of Columbia failed to submit SIP

revisions in a timely manner to satisfy certain requirements for the 2008 8-hour ozone NAAQS that apply to nonattainment areas and/or states in the OTR. See 82 FR 9158. As explained in that rulemaking action, consistent with the CAA and EPA regulations, these Findings of Failure to Submit established certain deadlines for the imposition of sanctions, if a state does not submit a timely SIP revision addressing the requirements for which the finding is being made, and for the EPA to promulgate a Federal implementation plan (FIP) to address any outstanding SIP requirements.

EPA found, *inter alia*, that the Commonwealth of Pennsylvania failed to submit SIP revisions in a timely matter to satisfy NNSR requirements for its marginal nonattainment areas, specifically the Allentown-Bethlehem-Easton, PA, the Lancaster, PA, the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD, DE, the Pittsburgh-Beaver Valley, PA, and the Reading, PA Areas.

Pennsylvania submitted its October 30, 2017 SIP revision to address the specific NNSR requirements for the 2008 8-hour ozone NAAQS, located in 40 CFR 51.160-165, as well as its obligations under EPA's February 3, 2017 Findings of Failure to Submit.

II. Summary of SIP Revision and EPA Analysis

This rulemaking action is specific to Pennsylvania's NNSR requirements. NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources located in a nonattainment area. The specific NNSR requirements for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.160–165.

Pennsylvania's SIP approved NNSR program, established in the Pennsylvania Code of Regulations (Pa. Code) Rule 25 Pa. Code Chapter 127 – *Construction, Modification,*

Reactivation, and Operation of Sources, applies to the construction and modification of major stationary sources in nonattainment areas. In its October 30, 2017 SIP revision, Pennsylvania certified that the version of 25 Pa. Code Chapter 127 in the SIP is at least as stringent as the Federal NNSR requirements for the Allentown-Bethlehem-Easton, PA, the Lancaster, PA, the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD, DE, the Pittsburgh-Beaver Valley, PA, and the Reading, PA Nonattainment Areas.

Other specific requirements for the 2008 8-hour ozone NAAQS, specific to NNSR requirements and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here.

EPA received one comment in response to the December 6, 2018 NPRM. The comment did not concern any of the specific issues raised in the NPRM, nor did it address EPA's rationale for the proposed approval of this SIP revision. Therefore, EPA is not responding to that comment.

III. Final Action

EPA is approving Pennsylvania's October 30, 2017 SIP revision addressing the NNSR requirements for the 2008 ozone NAAQS for the Allentown-Bethlehem-Easton, PA, the Lancaster, PA, the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD, DE, the Pittsburgh-Beaver Valley, PA, and the Reading, PA Nonattainment Areas. EPA has concluded that the Commonwealth's submission fulfills the 40 CFR 51.1114 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165, as well as its obligations under EPA's February 3, 2017 Findings of Failure to Submit. See 82 FR 9158.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is

published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to Pennsylvania’s NNSR program and the 2008 8-hour ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 12, 2019.

Cecil Rodrigues,
Acting Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart NN--Pennsylvania

2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for “2008 8-Hour Ozone National Ambient Air Quality Standard Nonattainment New Source Review Requirements” at the end of the table. The added text reads as follows:

§ 52.2020 Identification of plan.

* * * * *

(e)***

(1) ***

EPA-Approved Nonregulatory and Quasi-Regulatory Material

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * *				
2008 8-Hour Ozone NAAQS Nonattainment New Source Review Requirements	Allentown-Bethlehem-Easton, PA area (includes Carbon, Lehigh, and Northampton Counties), Lancaster, PA area (includes Lancaster County), Pittsburgh-Beaver Valley, PA area (includes Allegheny, Beaver, Butler, Fayette, Washington, and	10/30/17	<u>[Insert date of publication in the Federal Register, Insert Federal Register citation]</u>	

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
	Westmoreland Counties), Reading, PA area (includes Berks County), and Pennsylvania's portion of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE area (includes Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties)			

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[FR Doc. 2019-03109 Filed: 2/21/2019 8:45 am; Publication Date: 2/22/2019]